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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SOFTWARE AG, INC. and SOFTWARE AG,

Plaintiffs,

-against-

CONSIST SOFTWARE SOLUTIONS, INC.,  
f/k/a CONSIST INTERNATIONAL, INC. and  
NATALIO FRIDMAN,

Defendants.  
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08-CV-00389 (CM) (FM)

**DECLARATION OF  
RICARDO DO NASCIMENTO**

RICARDO DO NASCIMENTO hereby declares:

1. I am a partner in the Brazilian law firm David Do Nascimento Advogados Associados located at Av. Paulista, 1294 – 16 andar, CEP 01310-915, Sao Paulo/SP. I received my Bachelor's Degree in Law from Faculdades Metropolitanas Unidas de Sao Paulo in 1994. I practice in the areas of intellectual property law, unfair competition, consumer law, and software and domain name conflicts issues.

2. I have personal knowledge of the facts and law stated herein and am competent to testify thereto. I have translated the Brazilian laws quoted herein from Portuguese to English.

3. The Brazilian trademark system is a registration based system. The Brazilian Industrial Property Law ("Brazilian IP Law") has adopted the attributive system, which

prescribes that the ownership of a mark is acquired only by the registration of the mark with the Brazilian Patent and Trademark Office ("Brazilian Trademark Office"). Article 129 of the Brazilian IP Law states:

"Ownership of a mark shall be acquired by a valid registration pursuant, to the provisions of this Law; the owner shall have exclusive use of the mark throughout the national territory, without prejudice of the provisions of Arts. 147 and 148 with respect to collective and certification marks."

Although there is now one exception to the registration only based system, when Consist Consultoria Sistemas E Representacoes Ltda applied to register and obtained registration for the ADABAS and NATURAL marks, Brasil's trademark system was solely a registration based system.

4. According to records of the Brazilian Trademark Office, the company "CONSIST CONSULTORIA SISTEMAS E REPRESENTACOES LTDA" owns the following registrations in Brasil for the trademarks ADABAS and NATURAL:

a) Trademark registration No.: 811798313  
Mark: "ADABAS" (Word mark)  
Filing Date: 11/30/1984  
Granting Date: 11/25/1986

b) Trademark Registration No. 814447236  
Mark: "ADABAS" (Word mark)  
Filing Date: 09/02/1988  
Granting Date: 06/12/1990

c) Trademark Registration No. 816316970  
Mark: "ADABAS" (Word mark)  
Filing Date: 08/28/1991  
Granting Date: 05/11/1993

d) Trademark Registration No. 811798283  
Mark: "NATURAL" (Word mark)  
Filing Date: 11/30/1984  
Granting Date: 09/09/1986

e) Trademark Registration No. 811798291  
Mark:: "NATURAL" (Word mark)  
Filing Date: 11/30/1984  
Granting Date: 03/25/1986

f) Trademark Registration No. 811798305  
Mark "NATURAL" (Word mark)  
Filing Date: 11/30/1984  
Granting Date: 03/25/1986

These registrations are all valid and in full force and effect under Brazilian law.

5. Brazilian IP Law provides and has long provided that all applications to register trademarks with the Brazilian Trademark Office must be published in the Official BPTO Bulletin. Pursuant to Article 158 of Brazilian IP Law, "[o]nce recorded the application shall be published to enable contestations to be filed within a period of sixty (60) days." Software AG did not file any opposition to any of the trademarks listed in paragraph four (4) above during the sixty (60) day period after publication.

6. Article 174 of the Brazilian IP Law provides a statute of limitations of five (5) years from the date of registration of a mark for a party to seek the cancellation of the trademark registration. Article 174 states that "[p]roceedings to declare the nullity of a registration shall prescribe within a period of five (5) years from the date of registration." Software AG did not file any cancellation actions against any of the registrations listed in paragraph four (4) above during the five (5) year period after the registrations issued.

7. Under Brazilian IP Law there is no legal obligation to prove actual use of a mark in order to secure a trademark registration for the mark in Brasil.

8. Brazilian IP Law protects consumers as well as trademark owners. The Brazilian Trademark Office always examines an applied-for mark to determine if the mark will cause consumer confusion in Brasil. To ensure that the interests of Brazilian consumers are thoroughly considered, the Instituto Nacional de Propriedade Industrial (INPI), the equivalent of the United

States Patent and Trademark Office, participates in all actions regarding ownership of trademarks.

9. The Brazilian IP Code, in effect from December 12, 1971 until May 15, 1997, provided in its Article 90 that a license agreement had to specify the licensor's obligation to exercise quality control over the licensed products. I have reviewed the Distributorship Agreement between Software AG, Software AG of North America and Pan American Computer Systems, Inc. effective from January 1, 1984 to December 31, 1986 (the "Distributorship Agreement") and it does not specify any obligation to exercise quality control.

10. Article 175 of the Brazilian IP Law provides that any judicial cancellation action, as well as judicial proceeding involving Brazilian intellectual property rights, must be filed before the Brazilian Federal Court of Justice and in those cases in which the Brazilian Trademark Office is not a plaintiff, the Brazilian Trademark Office shall participate in the proceedings. Article 175 states:

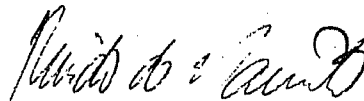
"Nullity proceedings shall be filed before the Federal Courts and in those cases in which INPI is not the plaintiff INPI shall participate in the proceedings."

11. In my opinion the Brazilian Federal Court and the Brazilian Trademark Office would never enforce any decision arising from a foreign court of law regarding a Brazilian trademark registration in light of the Brazilian Federal Court and Brazilian Trademark Office's jurisdiction over all judicial actions regarding Brazilian trademark registrations.

12. Consist's Brazilian trademark registrations for ADABAS and NATURAL are valid since they were granted under the legal administrative proceeding provided in the Brazilian IP Law, and the judicial cancellation action period has expired, according to the statute of limitations established in Article 174.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January 22, 2008  
Sao Paulo, Brasil

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RICARDO DO NASCIMENTO